

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SENATE BILL 1067

AN ACT

AMENDING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 248, SECTION 1; REPEALING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 287, SECTION 1; AMENDING SECTIONS 13-4062, 31-412, 41-1604.11 AND 41-1604.13, ARIZONA REVISED STATUTES; BLENDING MULTIPLE ENACTMENTS; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-604, Arizona Revised Statutes, as amended by
3 Laws 2007, chapter 248, section 1, is amended to read:

4 13-604. Dangerous and repetitive offenders; definitions

5 A. Except as provided in subsection F, G or H of this section or
6 section 13-604.01, a person who is at least eighteen years of age or who has
7 been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,
8 whether a completed or preparatory offense, and who has a historical prior
9 felony conviction shall be sentenced to imprisonment as prescribed in this
10 subsection and shall not be eligible for suspension of sentence, probation,
11 pardon or release from confinement on any basis except as specifically
12 authorized by section 31-233, subsection A or B until the sentence imposed by
13 the court has been served, the person is eligible for release pursuant to
14 section 41-1604.07 or the sentence is commuted. The presumptive term may be
15 mitigated or aggravated within the range prescribed under this subsection
16 pursuant to the terms of section 13-702, subsections B, C and D. The terms
17 are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	3 years	4.5 years	6 years
Class 5	1.5 years	2.25 years	3 years
Class 6	1 year	1.75 years	2.25 years

22 B. Except as provided in subsection I, J or K of this section or
23 section 13-604.01, a person who is at least eighteen years of age or who has
24 been tried as an adult and who stands convicted of a class 2 or 3 felony,
25 whether a completed or preparatory offense, and who has a historical prior
26 felony conviction shall be sentenced to imprisonment as prescribed in this
27 subsection and shall not be eligible for suspension of sentence, probation,
28 pardon or release from confinement on any basis except as specifically
29 authorized by section 31-233, subsection A or B until the sentence imposed by
30 the court has been served, the person is eligible for release pursuant to
31 section 41-1604.07 or the sentence is commuted. The presumptive term may be
32 mitigated or aggravated within the range prescribed under this subsection
33 pursuant to the terms of section 13-702, subsections B, C and D. The terms
34 are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	6 years	9.25 years	18.5 years
Class 3	4.5 years	6.5 years	13 years

38 C. Except as provided in subsection F, G, H or S of this section or
39 section 13-604.01, a person who is at least eighteen years of age or who has
40 been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,
41 whether a completed or preparatory offense, and who has two or more
42 historical prior felony convictions shall be sentenced to imprisonment as
43 prescribed in this subsection and shall not be eligible for suspension of
44 sentence, probation, pardon or release from confinement on any basis except
45 as specifically authorized by section 31-233, subsection A or B until the

1 sentence imposed by the court has been served, the person is eligible for
2 release pursuant to section 41-1604.07 or the sentence is commuted. The
3 presumptive term may be mitigated or aggravated within the range prescribed
4 under this subsection pursuant to the terms of section 13-702, subsections B,
5 C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
6 Class 4	8 years	10 years	12 years
7 Class 5	4 years	5 years	6 years
8 Class 6	3 years	3.75 years	4.5 years

9
10 D. Except as provided in subsection I, J, K or S of this section or
11 section 13-604.01, a person who is at least eighteen years of age or who has
12 been tried as an adult and who stands convicted of a class 2 or 3 felony, and
13 who has two or more historical prior felony convictions, shall be sentenced
14 to imprisonment as prescribed in this subsection and shall not be eligible
15 for suspension of sentence, probation, pardon or release from confinement on
16 any basis except as specifically authorized by section 31-233, subsection A
17 or B until the sentence imposed by the court has been served, the person is
18 eligible for release pursuant to section 41-1604.07 or the sentence is
19 commuted. The presumptive term may be mitigated or aggravated within the
20 range prescribed under this subsection pursuant to the terms of section
21 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
22 Class 2	14 years	15.75 years	28 years
23 Class 3	10 years	11.25 years	20 years

24
25 E. A person who is at least eighteen years of age or who has been
26 tried as an adult and who stands convicted of any misdemeanor or petty
27 offense, other than a traffic offense, and who has been convicted of one or
28 more of the same misdemeanors or petty offenses within two years next
29 preceding the date of the present offense shall be sentenced for the next
30 higher class of offense than that for which such person currently stands
31 convicted.

32 F. Except as provided in section 13-604.01, a person who is at least
33 eighteen years of age or who has been tried as an adult and who stands
34 convicted of a class 4, 5 or 6 felony involving the intentional or knowing
35 infliction of serious physical injury or the discharge, use or threatening
36 exhibition of a deadly weapon or dangerous instrument without having
37 previously been convicted of any felony shall be sentenced to imprisonment as
38 prescribed in this subsection and shall not be eligible for suspension of
39 sentence, probation, pardon or release from confinement on any basis except
40 as specifically authorized by section 31-233, subsection A or B until the
41 sentence imposed by the court has been served, the person is eligible for
42 release pursuant to section 41-1604.07 or the sentence is commuted. The
43 presumptive term may be mitigated or aggravated within the range prescribed
44 under this subsection pursuant to the terms of section 13-702, subsections B,
45 C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	4 years	6 years	8 years
Class 5	2 years	3 years	4 years
Class 6	1.5 years	2.25 years	3 years

G. Except as provided in section 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument a person who has a historical prior felony conviction involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	8 years	10 years	12 years
Class 5	4 years	5 years	6 years
Class 6	3 years	3.75 years	4.5 years

H. Except as provided in subsection S of this section or section 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument a person who has two or more historical prior felony convictions involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	12 years	14 years	16 years
Class 5	6 years	7 years	8 years
Class 6	4.5 years	5.25 years	6 years

I. Except as provided in section 13-604.01, upon a first conviction of a class 2 or 3 felony involving discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or upon conviction of a class 2 or 3

1 felony when the intentional or knowing infliction of serious physical injury
 2 upon another has occurred, the defendant shall be sentenced to imprisonment
 3 as prescribed in this subsection and shall not be eligible for suspension of
 4 sentence, probation, pardon or release from confinement on any basis except
 5 as specifically authorized by section 31-233, subsection A or B until the
 6 sentence imposed by the court has been served, the person is eligible for
 7 release pursuant to section 41-1604.07 or the sentence is commuted. The
 8 presumptive term may be mitigated or aggravated within the range prescribed
 9 under this subsection pursuant to the terms of section 13-702, subsections B,
 10 C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
11 Class 2	7 years	10.5 years	21 years
12 Class 3	5 years	7.5 years	15 years

14 J. Except as provided in section 13-604.01, upon conviction of a class
 15 2 or 3 felony involving the discharge, use or threatening exhibition of a
 16 deadly weapon or dangerous instrument or the intentional or knowing
 17 infliction of serious physical injury upon another, a person who has a
 18 historical prior felony conviction that is a class 1, 2 or 3 felony involving
 19 the use or exhibition of a deadly weapon or dangerous instrument or the
 20 intentional or knowing infliction of serious physical injury on another shall
 21 be sentenced to imprisonment as prescribed in this subsection and shall not
 22 be eligible for suspension of sentence, probation, pardon or release from
 23 confinement on any basis except as specifically authorized by section 31-233,
 24 subsection A or B until the sentence imposed by the court has been served,
 25 the person is eligible for release pursuant to section 41-1604.07 or the
 26 sentence is commuted. The presumptive term may be mitigated or aggravated
 27 within the range prescribed under this subsection pursuant to the terms of
 28 section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
29 Class 2	14 years	15.75 years	28 years
30 Class 3	10 years	11.25 years	20 years

32 K. Except as provided in subsection S of this section or section
 33 13-604.01, upon conviction for a class 2 or 3 felony involving the discharge,
 34 use or threatening exhibition of a deadly weapon or dangerous instrument or
 35 the intentional or knowing infliction of serious physical injury upon
 36 another, a person who has two or more historical prior felony convictions
 37 that are class 1, 2 or 3 felonies involving the use or exhibition of a deadly
 38 weapon or dangerous instrument or the intentional or knowing infliction of
 39 serious physical injury on another shall be sentenced to imprisonment as
 40 prescribed in this subsection and shall not be eligible for suspension of
 41 sentence, probation, pardon or release from confinement on any basis except
 42 as specifically authorized by section 31-233, subsection A or B until the
 43 sentence imposed by the court has been served, the person is eligible for
 44 release pursuant to section 41-1604.07 or the sentence is commuted. The
 45 presumptive term may be mitigated or aggravated within the range prescribed

1 under this subsection pursuant to the terms of section 13-702, subsections B,
2 C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
4 Class 2	21 years	28 years	35 years
5 Class 3	15 years	20 years	25 years

6 L. For the purposes of subsections I, J and K of this section in
7 determining the applicability of the penalties provided in this section for
8 second or subsequent class 2 or 3 felonies, the conviction for any felony
9 committed before October 1, 1978 which, if committed after October 1, 1978,
10 could be a dangerous felony under this section may be designated by the state
11 as a prior felony.

12 M. Convictions for two or more offenses committed on the same occasion
13 shall be counted as only one conviction for purposes of this section.

14 N. A person who has been convicted in any court outside the
15 jurisdiction of this state of an offense which if committed within this state
16 would be punishable as a felony or misdemeanor is subject to the provisions
17 of this section. A person who has been convicted as an adult of an offense
18 punishable as a felony or a misdemeanor under the provisions of any prior
19 code in this state shall be subject to the provisions of this section.

20 O. Time spent incarcerated within the two years next preceding the
21 date of the offense for which a person is currently being sentenced under
22 subsection E of this section shall not be included in the two years required
23 to be free of convictions for purposes of that subsection.

24 P. The penalties prescribed by this section shall be substituted for
25 the penalties otherwise authorized by law if the previous conviction or the
26 allegation that the defendant committed a felony while released on bond or on
27 the defendant's own recognizance or while escaped from preconviction custody
28 as provided in subsection R of this section is charged in the indictment or
29 information and admitted or found by the court or if the dangerous nature of
30 the felony is charged in the indictment or information and admitted or found
31 by the trier of fact. The release provisions prescribed by this section
32 shall not be substituted for any penalties required by the substantive
33 offense or provision of law that specifies a later release or completion of
34 the sentence imposed prior to release. The court shall allow the allegation
35 of a prior conviction, the dangerous nature of the felony or the allegation
36 that the defendant committed a felony while released on bond or on the
37 defendant's own recognizance or while escaped from preconviction custody at
38 any time prior to the date the case is actually tried unless the allegation
39 is filed fewer than twenty days before the case is actually tried and the
40 court finds on the record that the defendant was in fact prejudiced by the
41 untimely filing and states the reasons for these findings, provided that when
42 the allegation of a prior conviction is filed, the state must make available
43 to the defendant a copy of any material or information obtained concerning
44 the prior conviction. The charge of previous conviction or the allegation
45 that the defendant committed a felony while released on bond or on the

1 defendant's own recognizance or while escaped from preconviction custody
2 shall not be read to the jury. For the purposes of this subsection,
3 "dangerous nature of the felony" means a felony involving the discharge, use
4 or threatening exhibition of a deadly weapon or dangerous instrument or the
5 intentional or knowing infliction of serious physical injury upon another.

6 Q. Intentional failure by the court to impose the mandatory sentences
7 or probation conditions provided in this title shall be deemed to be
8 malfeasance.

9 R. A person who is convicted of committing any felony offense, which
10 felony offense is committed while the person is released on bail or on the
11 defendant's own recognizance on a separate felony offense or while the person
12 is escaped from preconviction custody for a separate felony offense, shall be
13 sentenced to a term of imprisonment two years longer than would otherwise be
14 imposed for the felony offense committed while released on bond or on the
15 defendant's own recognizance or while escaped from preconviction custody.
16 The additional sentence imposed under this subsection is in addition to any
17 enhanced punishment that may be applicable under any of the other subsections
18 of this section. The defendant is not eligible for suspension of sentence,
19 probation, pardon or release from confinement on any basis except as
20 specifically authorized by section 31-233, subsection A or B until the two
21 years are served, the person is eligible for release pursuant to section
22 41-1604.07 or the sentence is commuted.

23 S. A person who is at least eighteen years of age or who has been
24 tried as an adult and who stands convicted of a serious offense except a drug
25 offense, first degree murder or any dangerous crime against children, whether
26 a completed or preparatory offense, and who has previously been convicted of
27 two or more serious offenses not committed on the same occasion shall be
28 sentenced to life imprisonment and is not eligible for suspension of
29 sentence, probation, pardon or release from confinement on any basis except
30 as specifically authorized by section 31-233, subsection A or B until the
31 person has served not less than twenty-five years or the sentence is
32 commuted.

33 T. A person who is convicted of committing any felony offense with the
34 intent to promote, further or assist any criminal conduct by a criminal
35 street gang shall not be eligible for suspension of sentence, probation,
36 pardon or release from confinement on any basis except as authorized by
37 section 31-233, subsection A or B until the sentence imposed by the court has
38 been served, the person is eligible for release pursuant to section
39 41-1604.07 or the sentence is commuted. The presumptive, minimum and maximum
40 sentence for the offense shall be increased by three years **IF THE OFFENSE IS**
41 **A CLASS 4, 5 OR 6 FELONY OR SHALL BE INCREASED BY FIVE YEARS IF THE OFFENSE**
42 **IS A CLASS 2 OR 3 FELONY.** The additional sentence imposed pursuant to this
43 subsection is in addition to any enhanced sentence that may be applicable.

44 U. A person who is convicted of intentionally or knowingly committing
45 aggravated assault on a peace officer while the officer is engaged in the

1 execution of any official duties pursuant to section 13-1204, subsection A,
2 paragraph 1 or 2 shall be sentenced to imprisonment for not less than the
3 presumptive sentence authorized under this chapter and is not eligible for
4 suspension of sentence, commutation or release on any basis until the
5 sentence imposed is served.

6 V. Except as provided in section 13-604.01 or 13-703, if the victim is
7 an unborn child in the womb at any stage of its development, the defendant
8 shall be sentenced pursuant to this section.

9 W. For the purposes of this section:

10 1. "Absconder" means a probationer who has moved from the
11 probationer's primary place of residence without permission of the probation
12 officer, who cannot be located within ninety days of the previous contact and
13 against whom a petition to revoke has been filed in the superior court
14 alleging that the probationer's whereabouts are unknown. A probationer is no
15 longer deemed to be an absconder when voluntarily or involuntarily returned
16 to probation service.

17 2. "ESCAPE" MEANS:

18 (a) A DEPARTURE FROM CUSTODY OR FROM A JUVENILE SECURE CARE FACILITY,
19 A JUVENILE DETENTION FACILITY OR AN ADULT CORRECTIONAL FACILITY IN WHICH THE
20 PERSON IS HELD OR DETAINED, WITH KNOWLEDGE THAT THE DEPARTURE IS NOT
21 PERMITTED, OR THE FAILURE TO RETURN TO CUSTODY OR DETENTION FOLLOWING A
22 TEMPORARY LEAVE GRANTED FOR A SPECIFIC PURPOSE OR FOR A LIMITED PERIOD.

23 (b) A FAILURE TO REPORT AS ORDERED TO CUSTODY OR DETENTION TO BEGIN
24 SERVING A TERM OF INCARCERATION.

25 ~~2-~~ 3. "Historical prior felony conviction" means:

26 (a) Any prior felony conviction for which the offense of conviction:

27 (i) Mandated a term of imprisonment except for a violation of chapter
28 34 of this title involving a drug below the threshold amount; or

29 (ii) Involved the intentional or knowing infliction of serious
30 physical injury; or

31 (iii) Involved the use or exhibition of a deadly weapon or dangerous
32 instrument; or

33 (iv) Involved the illegal control of a criminal enterprise; or

34 (v) Involved aggravated driving under the influence of intoxicating
35 liquor or drugs, driving while under the influence of intoxicating liquor or
36 drugs with a suspended, canceled, revoked or refused driver license or
37 driving under the influence of intoxicating liquor or drugs with two or more
38 driving under the influence of intoxicating liquor or drug convictions within
39 a period of eighty-four months; or

40 (vi) Involved any dangerous crime against children as defined in
41 section 13-604.01.

42 (b) Any class 2 or 3 felony, except the offenses listed in subdivision
43 (a) of this paragraph, that was committed within the ten years immediately
44 preceding the date of the present offense. Any time spent on absconder
45 status while on probation, ON ESCAPE STATUS or incarcerated is excluded in

1 calculating if the offense was committed within the preceding ten years. If
2 a court determines a person was not on absconder status while on probation **OR**
3 **ESCAPE STATUS**, that time is not excluded.

4 (c) Any class 4, 5 or 6 felony, except the offenses listed in
5 subdivision (a) of this paragraph, that was committed within the five years
6 immediately preceding the date of the present offense. Any time spent on
7 absconder status while on probation, **ON ESCAPE STATUS** or incarcerated is
8 excluded in calculating if the offense was committed within the preceding
9 five years. If a court determines a person was not on absconder status while
10 on probation **OR ESCAPE STATUS**, that time is not excluded.

11 (d) Any felony conviction that is a third or more prior felony
12 conviction.

13 ~~3-~~ 4. "Preconviction custody" means the confinement of a person in a
14 jail in this state or another state after the person is arrested for or
15 charged with a felony offense.

16 ~~4-~~ 5. "Serious offense" means any of the following offenses if
17 committed in this state or any offense committed outside this state which if
18 committed in this state would constitute one of the following offenses:

- 19 (a) First degree murder.
- 20 (b) Second degree murder.
- 21 (c) Manslaughter.
- 22 (d) Aggravated assault resulting in serious physical injury or
23 involving the discharge, use or threatening exhibition of a deadly weapon or
24 dangerous instrument.
- 25 (e) Sexual assault.
- 26 (f) Any dangerous crime against children.
- 27 (g) Arson of an occupied structure.
- 28 (h) Armed robbery.
- 29 (i) Burglary in the first degree.
- 30 (j) Kidnapping.
- 31 (k) Sexual conduct with a minor under fifteen years of age.
- 32 (l) Child prostitution.

33 ~~5-~~ 6. "Substantive offense" means the felony, misdemeanor or petty
34 offense that the trier of fact found beyond a reasonable doubt the defendant
35 committed. Substantive offense does not include allegations that, if proven,
36 would enhance the sentence of imprisonment or fine to which the defendant
37 otherwise would be subject.

38 Sec. 2. Repeal

39 Section 13-604, Arizona Revised Statutes, as amended by Laws 2007,
40 chapter 287, section 1, is repealed.

41 Sec. 3. Section 13-4062, Arizona Revised Statutes, is amended to read:
42 13-4062. Anti-marital fact privilege; other privileged
43 communications

44 A person shall not be examined as a witness in the following cases:

1 prisoner, regardless of the classification of the prisoner, who has reached
2 the prisoner's parole eligibility date pursuant to section 41-1604.09,
3 subsection D, unless an increased term has been imposed pursuant to section
4 41-1604.09, subsection F, for the sole purpose of parole to the custody of
5 any other jurisdiction to serve a term of imprisonment imposed by the other
6 jurisdiction or to stand trial on criminal charges in the other jurisdiction
7 or for the sole purpose of parole to the custody of the state department of
8 corrections to serve any consecutive term imposed on the prisoner. On
9 review of an application for parole pursuant to this subsection the board may
10 authorize parole if, in its discretion, parole appears to be in the best
11 interests of the state.

12 C. A prisoner who is otherwise eligible for parole, who is not on home
13 arrest or work furlough and who is currently serving a sentence for a
14 conviction of a serious offense or conspiracy to commit or attempt to commit
15 a serious offense shall not be granted parole or absolute discharge from
16 imprisonment except by one of the following votes:

17 1. A majority affirmative vote if four or more members consider the
18 action.

19 2. A unanimous affirmative vote if three members consider the action.

20 3. A unanimous affirmative vote if two members consider the action
21 pursuant to section 31-401, subsection I and the chairman concurs after
22 reviewing the information considered by the two members.

23 D. The board, as a condition of parole, shall order a prisoner to make
24 any court-ordered restitution.

25 E. Payment of restitution by the prisoner in accordance with
26 subsection D of this section shall be made through the clerk of the superior
27 court in the county in which the prisoner was sentenced for the offense for
28 which the prisoner has been imprisoned in the same manner as restitution is
29 paid as a condition of probation. The clerk of the superior court shall
30 report to the board monthly whether or not restitution has been paid for that
31 month by the prisoner.

32 F. The board shall not disclose the address of the victim or the
33 victim's immediate family to any party without the written consent of the
34 victim or the victim's family.

35 G. For the purposes of this section, "serious offense" includes any of
36 the following:

37 1. A serious offense as defined in section 13-604, subsection W,
38 paragraph ~~4~~ 5, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or
39 (k).

40 2. A dangerous crime against children as defined in section 13-604.01.
41 The citation of section 13-604.01 is not a necessary element for a serious
42 offense designation.

43 3. A conviction under a prior criminal code for any offense that
44 possesses reasonably equivalent offense elements as the offense elements that

1 are listed under section 13-604, subsection W, paragraph ~~4~~ 5 and section
2 13-604.01, subsection N, paragraph 1.

3 Sec. 5. Section 41-1604.11, Arizona Revised Statutes, is amended to
4 read:

5 41-1604.11. Order for removal; purposes; duration; work
6 furlough; notice; failure to return;
7 classification; applicability; definition

8 A. The director of the state department of corrections may authorize
9 the temporary removal under custody from prison or any other institution for
10 the detention of adults under the jurisdiction of the state department of
11 corrections of any inmate for the purpose of employing that inmate in any
12 work directly connected with the administration, management or maintenance of
13 the prison or institution in which the inmate is confined, for purposes of
14 cooperating voluntarily in medical research that cannot be performed at the
15 prison or institution, or for participating in community action activities
16 directed toward delinquency prevention and community betterment programs.
17 The removal shall not be for a period longer than one day.

18 B. Under specific rules established by the director for the selection
19 of inmates, the director may also authorize furlough, temporary removal or
20 temporary release of any inmate for compassionate leave, for the purpose of
21 furnishing to the inmate medical treatment not available at the prison or
22 institution, for purposes preparatory to a return to the community within
23 ninety days of the inmate's release date or for disaster aid, including local
24 mutual aid and state emergencies. When an inmate is temporarily removed or
25 temporarily released for a purpose preparatory to return to the community or
26 for compassionate leave, the director may require the inmate to reimburse the
27 state, in whole or part, for expenses incurred by the state in connection
28 with the temporary removal or release.

29 C. The board of executive clemency, under specific rules established
30 for the selection of inmates, if it appears to the board, in its sole
31 discretion, that there is a substantial probability that the inmate will
32 remain at liberty without violating the law and that the release is in the
33 best interests of the state, may authorize the release of an inmate on work
34 furlough if the inmate has served not less than six months of the sentence
35 imposed by the court, is within twelve months of the inmate's parole
36 eligibility date and has not been convicted of a sexual offense. The
37 director shall provide information as the board requests concerning any
38 inmate eligible for release on work furlough. The inmate shall not be
39 released on work furlough unless the release is approved by the board.

40 D. An inmate who is otherwise eligible for work furlough pursuant to
41 subsection C of this section, who is not on home arrest and who is currently
42 serving a sentence for a conviction of a serious offense or conspiracy to
43 commit or attempt to commit a serious offense shall not be granted work
44 furlough except by one of the following votes:

1 1. A majority affirmative vote if four or more members of the board of
2 executive clemency consider the action.

3 2. A unanimous affirmative vote if three members of the board of
4 executive clemency consider the action.

5 3. A unanimous affirmative vote if two members of the board of
6 executive clemency consider the action pursuant to section 31-401, subsection
7 I and the chairman of the board concurs after reviewing the information
8 considered by the two members.

9 E. Before holding a hearing on the work furlough under consideration,
10 the board, on request, shall notify and afford an opportunity to be heard to
11 the presiding judge of the superior court in the county in which the inmate
12 requesting a work furlough was sentenced, the prosecuting attorney, the
13 director of the arresting law enforcement agency and the victim of the
14 offense for which the inmate is incarcerated. The notice shall state the
15 name of the inmate requesting the work furlough, the offense for which the
16 inmate was sentenced, the length of the sentence and the date of admission to
17 the custody of the state department of corrections. The notice to the victim
18 shall also inform the victim of the victim's right to be present and submit a
19 written report to the board expressing the victim's opinion concerning the
20 inmate's release. No hearing concerning work furlough shall be held until
21 fifteen days after the date of giving the notice. On mailing the notice, the
22 board shall file a hard copy of the notice as evidence that notification was
23 sent.

24 F. The board shall require that every inmate released on work furlough
25 comply with the terms and conditions of release as the board may impose,
26 including that the inmate be gainfully employed while on work furlough and
27 that the inmate make restitution to the victim of the offense for which the
28 inmate was incarcerated.

29 G. If the board finds that an inmate has failed to comply with the
30 terms and conditions of release or that the best interests of this state
31 would be served by revocation of an inmate's work furlough, the board may
32 issue a warrant for retaking the inmate before the expiration of the inmate's
33 maximum sentence. After return of the inmate, the board may revoke the
34 inmate's work furlough after the inmate has been given an opportunity to be
35 heard.

36 H. If the board denies the release of an inmate on work furlough or
37 home arrest, it may prescribe that the inmate not be recommended again for
38 release on work furlough or home arrest for a period of up to one year.

39 I. The director shall transmit a monthly report containing the name,
40 date of birth, offense for which the inmate was sentenced, length of the
41 sentence and date of admission to the state department of corrections of each
42 inmate on work furlough or home arrest to the chairperson of the house of
43 representatives judiciary committee or its successor committee and the
44 chairperson of the senate judiciary committee or its successor committee.
45 The director shall also submit a report containing this information for any

1 inmate released on work furlough or home arrest within a jurisdiction to the
2 county attorney, sheriff and chief of police for the jurisdiction in which
3 the inmate is released on work furlough or home arrest.

4 J. Any inmate who knowingly fails to return from furlough, home
5 arrest, work furlough or temporary removal or temporary release granted under
6 this section is guilty of a class 5 felony.

7 K. At any given time if the director declares there is a shortage of
8 beds available for inmates within the state department of corrections, the
9 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be
10 suspended for any inmate who has served not less than six months of the
11 sentence imposed by the court, who has not been previously convicted of a
12 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving
13 a sexual offense, the use or exhibition of a deadly weapon or dangerous
14 instrument or the infliction of serious physical injury pursuant to section
15 13-604, and the inmate shall be continuously eligible for parole, home arrest
16 or work furlough.

17 L. Prisoners who have served at least one calendar year and who are
18 serving a sentence for conviction of a crime committed on or after October 1,
19 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02
20 or 36-1002.03, and who are sentenced to the custody of the state department
21 of corrections, may be temporarily released, according to the rules of the
22 department, at the discretion of the director, one hundred eighty calendar
23 days prior to expiration of the term imposed and shall remain under the
24 control of the state department of corrections until expiration of the
25 maximum sentence specified. If an offender released under this section or
26 pursuant to section 31-411, subsection B violates the rules, the offender may
27 be returned to custody and shall be classified to a parole class as provided
28 by the rules of the department.

29 M. This section applies only to persons who commit felony offenses
30 before January 1, 1994.

31 N. For the purposes of this section, "serious offense" means any of
32 the following:

33 1. A serious offense as defined in section 13-604, subsection W,
34 paragraph ~~4~~ 5, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or
35 (k).

36 2. A dangerous crime against children as defined in section 13-604.01.
37 The citation of section 13-604.01 is not a necessary element for a serious
38 offense designation.

39 3. A conviction under a prior criminal code for any offense that
40 possesses reasonably equivalent offense elements as the offense elements that
41 are listed under section 13-604, subsection W, paragraph ~~4~~ 5 or section
42 13-604.01, subsection N, paragraph 1.

1 4. Payment of the electronic monitoring fee in an amount determined by
2 the board of not less than one dollar per day and not more than the total
3 cost of the electronic monitoring unless, after determining the inability of
4 the inmate to pay the fee, the board requires payment of a lesser amount.
5 The fees collected shall be returned to the department's home arrest program
6 to offset operational costs of the program.

7 5. Remaining at the inmate's place of residence at all times except
8 for movement out of the residence according to mandated conditions.

9 6. Adherence to any other conditions imposed by the court, board of
10 executive clemency or supervising corrections officers.

11 7. Compliance with all other conditions of supervision.

12 E. Before holding a hearing on home arrest, the board on request shall
13 notify and afford an opportunity to be heard to the presiding judge of the
14 superior court in the county in which the inmate requesting home arrest was
15 sentenced, the prosecuting attorney and the director of the arresting law
16 enforcement agency. The board shall notify the victim of the offense for
17 which the inmate is incarcerated. The notice shall state the name of the
18 inmate requesting home arrest, the offense for which the inmate was
19 sentenced, the length of the sentence and the date of admission to the
20 custody of the state department of corrections. The notice to the victim
21 shall also inform the victim of the victim's right to be present and to
22 submit a written report to the board expressing the victim's opinion
23 concerning the inmate's release. No hearing concerning home arrest may be
24 held until fifteen days after the date of giving the notice. On mailing the
25 notice, the board shall file a hard copy of the notice as evidence that
26 notification was sent.

27 F. An inmate who is placed on home arrest is on inmate status, is
28 subject to all the limitations of rights and movement and is entitled only to
29 due process rights of return.

30 G. If an inmate violates a condition of home arrest that poses any
31 threat or danger to the community, or commits an additional felony offense,
32 the board shall revoke the home arrest and return the inmate to the custody
33 of the state department of corrections to complete the term of imprisonment
34 as authorized by law.

35 H. The ratio of supervising corrections officers to supervisees in the
36 home arrest program shall be no greater than one officer for every
37 twenty-five supervisees.

38 I. The board shall determine when the supervisee is eligible for
39 transfer to the regular parole program pursuant to section 31-411.

40 J. This section applies only to persons who commit felony offenses
41 before January 1, 1994.

42 K. For the purposes of this section, "serious offense" includes any of
43 the following:

- 1 1. A serious offense as defined in section 13-604, subsection W,
2 paragraph ~~4~~ 5, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or
3 (k).
- 4 2. A dangerous crime against children as defined in section 13-604.01.
5 The citation of section 13-604.01 is not a necessary element for a serious
6 offense designation.
- 7 3. A conviction under a prior criminal code for any offense that
8 possesses reasonably equivalent offense elements as the offense elements that
9 are listed under section 13-604, subsection W, paragraph ~~4~~ 5 and section
10 13-604.01, subsection N, paragraph 1.